IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 12537 of 2007(P)

PETITIONER:

SAJI THOMAS, NELLISSERIPARAYIL HOUSE,
KALLISSERI P.O.,CHENGANNUR TALUK,
ALAPPUZHA DISTRICT.

BY ADV. SRI.K.MADHUSOODHANAN NAIR

RESPONDENTS:
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1. THE CIRCLE INSPECTOR OF POLICE,
THIRUVALLA.

2. THE GEOLOGIST,
DEPARTMENT OF MINING & GEOLOGY,
DISTRICT OFFICE,PATHANAMTHITTA.

3. THE DISTRICT ENVIORNMENTAL ENGINEER,
POLLUTION CONTROL BOARD,PATHANAMTHITTA.

4. THE SECRETARY,
ERAVIPEROOR GRAMA PANCHAYATH,
THIRUVALLA.

5. THE TAHASILDAR,THIRUVALLA. TALUK OFFICE
THIRUVALLA.

6. PRAMEELA W/O.A.K.SOMAN NAIR,
AAYITHITTA VEEDU,OTHARA EAST,
ERAVIPEROOR VILLAGE,THIRUVALLA,
PATHANAMTHITTA DISTRICT.

7. SARAMMA OOMMEN, S/O.C.V.OMMEN,
ETTUPARAYIL VEEEDU, OTHARA EAST,
ERAVIPEROOR VILLAGE,
THIRUVALLA,PATHANAMTHITTA DISTRICT.

BY ADV. SRI.T.R.RAJAN
BY GOVT. PLEADER SRI. P.A. SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.12537/07

PETITIONER'S EXHIBITS:

Ext.P1: TRUE PHOTOCOPY OF THE AGREEMENT EXECUTED BY RADHAMMA GIVING CONSENT TO CONDUCT THE QUARRYING OPERATION IN HER PROPERTY.

EXT.P2: -DO- OF THE LICENCE NO.A2-114/06 ISSUED BY ERAVIPEROOR GRAMA PANCHAYAT IN THE NAME OF THE PETITIONER.

EXT.P3: TRUE COPY OF THE RECEIPT FOR AN AMOUNT OF RS.1501/- ISSUED BY ERAVIPEROOR GRAMA PACHAYAT.

EXT.P4: TRUE PHOTOCOPY OF QUARRYING PERMIT FOR GRANIT BUILDING STONE ISSUED ON 11.12.2006 TO THE PETITIONER FOR A PERIOD UPTO 14.2.2007.

EXT.P5: TRUE PHOTOCOPY OF QUARRYING PERMIT FOR GRANITE BUILDING STONE ISSUED ON 15.2.2007 TO THE PETITIONER EXTENDING THE PERIOD UPTO 27.3.2007.

EXT.P6: TRUE PHOTOCOPY OF THE LICENSE ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVES TO SHI. P. THOMAS.

EXT.P7: TRUE PHOTOCOPY OF PROCEEDINGS NO.23/04-05/MM/GS/117/M/04 DATED 8.9.2004 OF THE GEOLOGIST, MINING & GEOLOGY DEPARTMENT, PATHANAMTHIATTA DISTRICT.

EXT.P8: TRUE COPY OF THE LOCATION SKETCH PREPARED BY VILLAGE OFFICER, ERAVIPEROOR.

EXT.P9: TURE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 28.3.2007.

EXT.P10: COPY OF PERMITO.901/0607/QP/MM/GS/59/DOPTA/M/07 ISSUED BY THE 2ND RESPONDENT TO THE PETITINER DATED 28.3.2007.

EXT.P11: TRUE COPY OF THE LICENCE NO.E/SC/KL/22/217/(E-11493) ISSUED BY DEPUTY CONTROLLER OF EXPLOSVIE, ERNAKULAM TO Sri.P.THOMAS DATED 15.3.2007.

EXT.P12: TRUE COPY OF THE LICENCE NO.A2-37/07 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER DATED 30.4.2007.

RESPONDENTS' EXHIBITS:

EXT.R6(A): TRUE COPY OF THE ORDER DATED 26.5.2003 OF THE MUNSIFF COURT, THIRUVALLA IN I.A.NO.1100/2005IN O.S.NO.218/2005.

EXT.R6(B): TRUE COPY OF THE ROUGH SKETCH PREPARED BY THE ADVOCATE COMMISSIONER BINDU RANI K. APPOINTED IN O.S.NO.218/2005(I.A.NO.354/05) ONS THE FIELS OF THE MUNSIFF COURT, THIRUVALLA..

EXT. R6(C): TRUE COPY OF STHE COMMUNICATION NO.PCB/A/CHN/AC/34/95 DATED 08. 11.2006 ISSUED BY THE SENIOR ENVIRONMENTAL ENGINEER, REGIONAL OFFICE, ERNAKULAM TO ONE M/S. CONCRETE AGGREGATE INDUSTRIES.

/ TRUE COPY /

P.S. TO JUDGE.

P.R. RAMAN & K. HEMA, JJ.

W.P.(C).No.12537 of 2007 P

Dated this the 14th day of June, 2007.

JUDGMENT

Raman, J.

The petitioner is engaged in quarrying of minor minerals in the property owned by one Radhamma in Sy.No.539/9-1 of Iraviperoor Village in Thiruvalla Taluk. According to petitioner, after obtaining necessary consent from the land owner, he approached 4th respondent for licence for quarrying from the Panchayat and also from other statutory authorities. Exhibit P1 is a copy of the consent obtained from the owner. Exhibit P2 is a copy of the licence issued by the Grama Panchayat, which is valid upto 31.3.2007 and the validity of the period of which is subsequently extended by Ext.P12, produced along with the reply affidavit. Exhibit P4 is copy of quarrying permit issued by the Department of Mining and Geology, Pathanamthitta under date 14.12.2006 in favour of the petitioner for extracting and removing 250 MT of granite building stone from 3 Ares comprised in Sy.No.539/9-1 of Eraviperoor Village in Thiruvalla Taluk. That license is valid upto 14.2.2007 which has since been extended upto 15.5.2007. Learned counsel for petitioner submitted that the validity of the permit was further extended upto 15.7.2007 as per permit No.181/07-09/QP/MM/GS/924/DOPTA/M/07 dated 23.5.2007. He has also produced Ext.P6, a license issued in favour of one P.Thomas by the Department of

Explosives. Ext.P6 is issued in Form 22 of Explosives Rules. According to petitioner, when he was doing quarrying operations strictly in accordance with the provisions of law and after obtaining necessary license, party respondents, who are nearby residents of the locality, are causing physical obstruction to the quarrying operation carried on by him. In pursuance of the notice issued, respondent No.6 filed a detailed counter affidavit.

2. We have also heard arguments on both sides. Learned counsel appearing for 6th respondent would submit that the petitioner has not produced any license, as contemplated under Rule 144 of the Explosives Rules, which inter alia, provides that no person shall use explosives for blasting purposes unless he employs a qualified shot-firer holding a Shot-Firer's Permit granted under these rules. The petitioner, on the other hand, would submit that only such person having possessed the required license as contemplated under Rule 144 is engaged for doing the blasting work. In this connection, reference was made to From No.30 which is the licence to be issued as contemplated under Rule 144. Petitioner has not produced any license in Form No.30 before this Court. Petitioner, however, assured that the explosion will be carried on only by a person having possessed licence as contemplated under Rule 144 of the Explosives Rules.

3. Learned government Pleader, appearing on behalf of the State, on instructions from the Tahsildar submits that the required licence and permit are possessed by the petitioner. It is further submitted that if party respondents have got any grievance, it is open to them to raise such

grievance before the appropriate authority. Learned counsel for 6th respondent submitted that a petition has been filed before the Geologist on 14.5.2007. Though he did not produce along with the counter-affidavit, a copy of the same was made available for perusal. In the facts and circumstances, we dispose of the writ petition as follows:

If the petitioner is possessed all the requisite license and permit for doing the quarrying operation and the explosives strictly based on license issued, as contemplated under the relevant rules, there cannot be any physical obstruction to the said work being carried on. Since 6th respondent has filed a complaint before the Geologist, the same shall be looked into and disposed of in accordance with law, within a period of two weeks, after hearing both parties. It is open to 6th respondent to seek for any site inspection of the properties by the Geologist and also seek for any interim order. So long as there is a license issued in favour of the petitioner and it is in force there cannot be any physical obstruction and therefore the police will come to the aid of the petitioner for enabling him to carry on the quarrying operations strictly within the area earmarked in the license issued in that behalf. Regarding the blasting operation if any carried on, the same shall strictly be based on the licence issued by the competent authority and by such persons possessing the requisite licences. The police shall also verify the license and ensure that all requisite licences are possessed by the petitioner. This will not, however, interdict any

statutory authorities in passing appropriate orders in the petition filed by the 6th respondent.

Writ Petition is disposed of as above.

A copy of this judgment shall be issued to 6th respondent on usual terms so as to produce before the Geologist for information and compliance.

P.R.RAMAN, JUDGE.

K. HEMA, JUDGE.

Krs.